

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB DOCKET NO. AB-167 (Sub- No. 1191X)

232074

CONSOLIDATED RAIL CORPORATION – ABANDONMENT EXEMPTION –
IN PHILADELPHIA, PA

NOTICE OF APPEAL OF THE
OFFICE OF PROCEEDINGS' MARCH 14, 2012 DECISION
REJECTING OFA

1. Comes now James Riffin (“**Riffin**”), Eric Strohmeier and CNJ Rail Corporation, who file this Notice of Appeal of the Office of Proceedings’ March 14, 2012 Decision rejecting the Offer of Financial Assistance (“**OFA**”) that was jointly filed by Eric Strohmeier, CNJ Rail Corporation and James Riffin, on March 9, 2012, which OFA was amended on March 13, 2012.

BACKGROUND INFORMATION

2. On January 5, 2012, Consolidated Rail Corporation (“**Conrail**”) filed a Notice of Exemption (“**NOE**”), to abandon that portion of the Berks Street Industrial Track that lies between MP 0.00 and MP 2.92, all in Philadelphia, PA.

3. On March 2, 2012, the Board served a decision granting Conrail authority to abandon the Line that is the subject of this proceeding. The March 2 decision stated that abandonment authority for that portion of the Line that lies between MP 0.00 and 2.80, would become effective on March 19, 2012, and stated that OFA’s to purchase this portion of the Line were due by March 9, 2012. It further stated that abandonment authority for that portion of the Line that lies between MP 2.80 and 2.92, was effective immediately, i.e., as of March 2, 2012.

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4. On Friday, March 9, 2012, a draft version of an Offer of Financial Assistance (“OFA”) to purchase the Line that is the subject of this proceeding, was electronically jointly filed by Eric Strohmeyer, James Riffin and CNJ Rail Corporation. Actual signatures did not appear on the electronic filing.

5. On March 13, 2012, the intended final version of the OFA was filed.

6. On Friday, March 9, 2012, Riffin overnighted to the Board a Supplement to OFA, to provide the Board with Riffin’s actual signature, to verify that Riffin filed the OFA in his individual capacity. This Supplement was received and filed by the Board on Monday, March 12, 2012.

7. On Monday, March 12, 2012, Riffin overnighted to the Board a Motion for Protective Order, together with Riffin’s confidential personal financial statement, under seal. The last paragraph in the “Notes” section of the personal financial statement, stated:

“The original BCSB Letterhead showing Riffin’s cash on hand, was filed in AB-1071, **and is incorporated by reference herein, as if fully set out herein.** There have been no material changes in Riffin’s financial status between January 15, 2012 and March 9, 2012, the date this Personal Financial Statement was prepared for AB-167 (Sub No. 1191X).” Bold added.

8. Riffin’s Protective Order was received by the Board, and filed, on March 14, 2012. (For reasons unknown, UPS did not deliver the Protective Order the day after Riffin overnighted it to the Board. Riffin’s UPS receipt states that the expected deliver date was March 13, 2012. See photocopy of Riffin’s UPS receipt, attached hereto.)

9. On Monday, March 12, 2012, Eric Strohmeyer electronically filed, using the ‘confidential’ icon, his personal financial statement, and a bank statement indicating how much cash CNJ Rail had in its bank account. He was assisted in this electronic filing by Matthew Bornstein, 202 - 245-0385, a Board employee. For reasons unknown, this financial information was not forwarded to Rachel Campbell, Director, Office of Proceedings.

10. On Wednesday, March 14, 2012, Ms. Campbell rejected the Offerors’ OFA, stating:

- A. “As of the service date of this decision, however, the Offerors still have not submitted complete financial information.” Slip Op. at 3.
- B. “This OFA will be rejected because the Offerors have not demonstrated that they are financially responsible or that their offer is reasonable.” Slip Op. at 3-4.
- C. “The only financial information submitted, Riffin’s Personal Financial Statement, is summary and **unsupported.**” Slip Op. at 4. Bold added.
- D. “Not only is the OFA untimely because a complete offer was not filed, but, because complete financial information was not submitted, the Strohmeier Parties have failed to demonstrate that they would be able to finance the purchase of the OFA Segment and to operate it for at least two years, as called for under the OFA statute. FN 9: See 49 U.S.C. §10904(f)(4)(A); Union Pac. R.R. – Aban. Exemption – In Lassen Cnty, Cal., & Washoe Cnty, Nev., AB 33 (Sub-No. 230X), slip op. 3, (STB served Sept. 19, 2008).” Bold added.
- E. “Moreover, the offer itself lacks merit. Conrail defines the property it owns between milepost 2.70 and milepost 2.80 as 1.39 acres. The Strohmeier Parties would have the Board carve a corridor 20 feet wide and 528 feet long through that rail property. The Strohmeier Parties further ask that the Board permit the acquisition of additional square footage for an area tha the Offerors will determine in the future.

This selective parceling approach to an OFA is not appropriate and also constitutes grounds for rejecting the OFA. It is not clear to Conrail, or to the Board, exactly where the Offerors’ swath of land would run or even how much land the Strohmeier Parties wish to acquire and when. As a general proposition, in proceedings involving the forced sale of a rail line, the agency does not favor and will closely scrutinize any offer to purchase less than the entire right-of-way of the railroad. FN 10: See Union Pac. R.R. – Aban. Exemption – In Lancaster Cnty, Neb., AB 33 (Sub-No 112X), slip op. 5 (STB served Mar. 2, 1998). [end FN 10] Because the acquiring party is in effect acting pursuant to condemnation power, the carrier whose property is being taken must receive ‘just compensation.’ Requiring a carrier to sell less than the entire width of the right-of-way can leave the railroad with a liability in the form of unwanted, unproductive land. Unless the carrier is somehow compensated for the diminution in the value of its remaining estate, it will emerge from the OFA process as a net loser, which is contrary to the intent of the statute. For that reason, an offeror seeking to acquire less than the entire right-of-way will ordinarily have a heavy burden to bear. FN 11: See Boston & Me. Corp. & Springfield Terminal Ry. – Aban & Discontinuance of Serv. in Hartford Cnty, Conn., AB 32 (Sub-No. 43) (ICC served Aug. 9, 1991). [end FN 11] The Strohmeier Parties only assert that the 20-foot wide -right-of-way they seek will be adequate. This unsubstantiated assertion is not enough to overcome such burden.” Slip Op. 4-5.

ARGUMENT

11. This appeal of the Office of Proceedings' March 12, 2012 Decision is pursuant to 49 CFR 1152.25(e), 49 CFR 1152.27(e)(2) and 49 CFR 1011.2(a)(7).

12. 49 CFR 1152.25(d)(5) states that the "Board will reject any pleading filed after its due date unless good cause is shown why the pleading is filed late."

13. The Office of Proceedings rejected the OFA for two reasons:

- A. The Office of Proceedings (incorrectly) alleged that incomplete financial statements had been filed.
- B. The Office of Proceedings (incorrectly) held that offers to purchase less than what a railroad was seeking to abandon, would be rejected.

Riffin's Financial Statement

14. The Board's regulations do not specify what constitutes 'financial responsibility,' nor do the Board's regulations specify what documents must be submitted to demonstrate that an offeror is 'financially responsible.' The regulations merely state that to be 'financially responsible,' "it [the offeror] has **or within a reasonable time will have** the financial resources to fulfill proposed contractual obligations;" Bold added. 49 CFR 1152.27(c)(1)(ii)(B).

15. To Riffin's knowledge, the Board has never served a decision specifying what constitutes 'financial responsibility,' nor has the Board served a decision specifying what documents must be submitted to demonstrate that an offeror is 'financially responsible.' In *Conrail Abandonments Under NERSA, Ex Parte* No. 419, 365 I.C.C. 472, 476, the Commission stated:

"The financial assistance offer need not be detailed. It must simply be sufficient to show (1) that the offeror is financially responsible, and (2) that the offer is reasonable because it approximates the proposed purchase or subsidy amount or explains why those figures are too high and its figure should be considered."

16. Due Process requires notification of what the rules are, and a reasonable opportunity to present evidence in conformity with the rules. Making a decision based on unspecified criteria, violates Due Process.

17. In this proceeding, the Office of Proceedings rejected the Offerors' OFA on the grounds that Riffin's PFS was "summary" and "unsupported." The Board's Regulations, prior decisions, and the Decision do not specify what information or documents would constitute "support" for a personal financial statement. The Board's decision did not specify in what way Riffin's PFS was "summary." All PFS's are 'summary.' Precisely how much detail the Board requires in an OFA proceeding has never been disclosed to the public.

18. Rejecting the Offerors' OFA on the basis that Riffin's PFS was "summary" and "unsupported," given the total lack of information regarding what the Board considers to be 'supportive' and 'non-summary,' is arbitrary and capricious. The more appropriate course of action would have been to issue a decision specifying what documents the Offerors needed to file in order to 'support' their financial statements.

19. §10904 does not define the term 'financial responsibility.' 49 CFR 1152.27(c)(1)(ii)(B) ambiguously defines 'financial responsibility' as: "it [the offeror] has **or within a reasonable time will have** the financial resources to fulfill proposed contractual obligations." The phrase 'proposed contractual obligations' is undefined in the regulations, and has not been defined in previous decisions, other than to state that the Offeror must demonstrate that it has the means to pay the purchase price for the line.

20. The Office of Proceedings **incorrectly** held that Riffin's Personal Financial Statement ("PFS") was 'unsupported.' Riffin's PFS indicated that he had a sum of cash significantly greater than the \$30,261 being offered for the portions of the Line the Offerors desired. In the last paragraph in the 'Notes' section, Riffin incorporated by reference, the original of a BCSB letter indicating how much cash Riffin had in a checking account. In the past, statements on Bank letterhead as to how much money a depositor has in a bank, have been sufficient documentation. See for example, AB-55 (Sub No. 659X). Riffin also identified a large number of additional assets he possessed, which the Board is acutely aware of, since the Board

scrutinized Riffin's Bankruptcy Schedules, and would know of the accuracy of Riffin's statements under the doctrine of Judicial Notice. To say that Riffin failed to 'support' the statements made in his PFS, is clearly arbitrary, capricious and erroneous.

21. Gabrielle Meyer, a STB employee and staff attorney, related to Riffin on March 19, 2012, that the Office of Proceedings did not give any weight to Riffin's bank's statement, due to the bank statement being dated January 6, 2012. Neither the Board's regulations nor any Board decision state how recent a bank's statement must have been executed. In this case, Riffin addressed the issue of whether his financial condition had changed since the effective date of his PFS, by noting in his "Notes," that there has not been any material change in Riffin's financial condition since the January 15, 2012 effective date of his PFS. Corporations and businesses render balance sheets yearly. Occasionally, quarterly financial statements may be issued. If Riffin's PFS was not given any weight because it was dated two months ago, that decision was arbitrary and capricious, since in the business world, financial statements are considered 'current' if executed within the last quarter, particularly when there is a statement indicating that there has been no material change since the date of the last executed balance sheet.

22. On March 19, 2012, Riffin asked Mr. Meyer how one would 'document' possession of U.S. currency. To date, Riffin has not received a reply. Riffin offered to provide a Board employee the opportunity to visually inspect and count a quantity of U.S. currency. Mr. Meyer stated that the Board was unprepared to use that means to prove 'financial responsibility.'

23. The Board's regulations state, **"has or within a reasonable time will have** the financial resources to fulfill proposed contractual obligations." The inclusion of this clause in the Board's regulations, indicates that 'present' 'collected' funds are not mandated. The Board's regulations do not specify, nor has any Board decision specified, how one would document that one will have sufficient funds to fulfill contractual obligations 'within a reasonable time.' Any decision rejecting an OFA on unspecified grounds, would amount to a violation of Due Process, and would be arbitrary and capricious, if an offeror was not afforded some opportunity to provide, and some indication as to what documentation needed to be provided.

24. To further support Riffin's contention that he is 'financially responsible,' he has provided further evidence of his 'financial responsibility' under seal. For the Board's convenience, Riffin has appended, under seal, a photocopy of the BCSB statement that Riffin filed under seal in AB-1071, and which Riffin incorporated by reference in this proceeding.

CNJ Rail's Financial Responsibility

25. Normally, Eric Strohmeyer would e-mail a copy of his financial statements to Barbara Saddler, who then would file them under seal. Ms. Saddler indicated to Mr. Strohmeyer that she was going on a vacation, and that she would not be in her office on March 12, 2012. She suggested that Mr. Strohmeyer electronically file his confidential financial information. On March 9, 2012, Mr. Strohmeyer attempted to do that, without success. On March 12, 2012, Mr. Strohmeyer spoke with Matthew Bornstein, a Board employee, who telephonically told Mr. Strohmeyer how to file confidential information electronically. Mr. Strohmeyer followed Mr. Bornstein's instructions. Mr. Strohmeyer's financial statements appeared to have been electronically filed. Unfortunately, the Board's electronic filing system does not generate a confirmation notice. For reasons unknown, the financial statements Mr. Strohmeyer electronically filed with the Board, evidently were never sent to the Office of Proceedings, since Ms. Campbell stated in her decision that she only received a copy of Riffin's financial statements.

26. Mr. Strohmeyer has hand filed a second copy of his personal financial statement, and a second copy of CNJ Rail's financial statement.

27. Good cause for 'late-filing' Mr. Strohmeyer's pfs and CNJ Rail's financial statement, has been demonstrated. Ms Saddler, the normal conduit, was on vacation. The financial statements were in fact filed, pursuant to instructions provided by Mr. Bornstein. What happened to those financial statements after they were electronically filed, only the Board can determine. The fact that Mr. Strohmeyer's financial statements were not copied to Ms. Campbell, certainly was not due to Mr. Strohmeyer's negligence.

28. The Offerors have demonstrated that they have sufficient cash to pay the purchase price for the portion of the Line they desire to purchase.

OPERATE THE LINE FOR TWO YEARS

29. Ms. Campbell's decision stated the offerors "have failed to demonstrate that they would be able to finance the purchase of the OFA Segment and to operate it for at least two years, as called for under the OFA statute." Citing 49 U.S.C. 10904(f)(4)(A) and AB 33 (Sub-No. 230X) [which in turn referenced 49 U.S.C. 10904(f)(4)(A)].

30. 49 U.S.C. 10904(f)(4)(A) states:

"No purchaser of a line or portion of line sold under this section may transfer or discontinue service on such line prior to the end of the second year after consummation of the sale, nor may such purchaser transfer such line, except to the rail carrier from whom it was purchased, prior to the end of the fifth year after consummation of the sale."

31. Nowhere in 49 U.S.C. 10904 does it state that an OFA offeror must demonstrate the financial ability to operate a line for two years. The statute is silent with regard to what constitutes 'financial responsibility.' The Board's regulations define 'financial responsibility' thus: "it [the offeror] has **or within a reasonable time will have** the financial resources to fulfill proposed contractual obligations;" Bold added. 49 CFR 1152.27(c)(1)(ii)(B).

32. The only 'proposed **contractual** obligations' is the requirement to pay the purchase price. At the time an OFA is made, the offeror generally has no other contractual obligations. Since many lines purchased via the OFA process have been ill-maintained for years, often times it can take more than two years just to get the line operational. In addition, the Board has permitted a line to be purchased via the OFA procedures when the offeror made it clear that the offeror did not intend to operate the line, the offeror only wanted to preserve the line for potential future operation. See: *The Cincinnati, New Orleans & Texas Pacific Railway Co. – Abandonment Exemption – in Cumberland and Roane Counties, TN*, STB Docket No. AB-290 (Sub-No. 208X), decided November 13, 2000.

33. The only statute that defines ‘financial responsibility’ to include the ability to operate a line for a period of time after purchase, is 49 U.S.C. 10907, the ‘railroad development’ statute. When using this statute to obtain a line of railroad, normally the line is operational, and is in operation. The goal is to replace the existing rail carrier with a new carrier, on the grounds that the existing carrier is not providing good service. Under §10907, there generally is a ‘going concern’ value. In an OFA proceeding, very seldom is the line in operation, and very seldom is there a ‘going concern’ value.

PURCHASING LESS THAN ALL OF A LINE

34. The Office of Proceedings held that an OFA offeror had a ‘heavy burden to bear’ to justify buying less than all of a line being abandoned. To support this position, the Office of Proceedings cited: *Union Pac. R.R. – Aban. Exemption – In Lancaster Cnty, Neb.*, AB 33 (Sub-No 112X), slip op. 5 (STB served **Mar. 2, 1998**) and *Boston & Me. Corp. & Springfield Terminal Ry. – Aban & Discontinuance of Serv. in Hartford Cnty, Conn.*, AB 32 (Sub-No. 43) (ICC served **Aug. 9, 1991**).

35. In footnote 1 to paragraph 16 of the Offerors’ Second Request to Toll the Time Period for Filing an Offer of Financial Assistance, filed on February 24, 2012, the Offerors reference *Railroad Ventures, Inc. – Abandonment Exemption – Between Youngstown, OH, and Darlington, PA, In Mahoning and Columbiana Counties, OH, and Beaver County, PA*, STB Docket No. AB-556 (Sub-No. 2X), *aff’d R.R. Ventures, Inc. v. STB*, 299 F.3d 523 (6th Cir. 2002).

36. In *Railroad Ventures, Inc. v. Surface Transp. Bd.*, 299 F.3d 523 at 552 (6th Cir. 2002) (“*Railroad Ventures*”), the 6th Circuit held:

“Thus, while a railroad may ‘abandon any part of its railroad lines’ under 49 U.S.C. §10903(a)(1)(A), the STB is permitted to authorize a prospective buyer under the OFA provisions to purchase ‘that part of the railroad line to be abandoned’ under 49 U.S.C. §10904(d). The line owner can seek authority to abandon all or a part of its rail line, but if it does so, then, pursuant to §10904(f)(1)(B), a qualified OFA purchaser **is entitled** to determine how much of the line it wishes to acquire. Fn 13. Once the offeror seeks to purchase the entire rail line or a portion thereof as described in the abandonment petition, 49 U.S.C. §10904(c), the STB is then statutorily obligated to render a decisions setting price and other sale terms as to what the offeror seeks to buy, within thirty days of a request to set

conditions. 49 U.S.C. §10904 (f)(1)(A). Under this statutory provision, then, it necessarily follows that **neither the abandoning rail carrier nor the STB can alter or amend what the OFA buyer has offered to buy; rather, the STB can only set the terms on what the offeror has proposed to purchase.**

In short, once the owner of a rail line submits a petition seeking the STB's authority to abandon the line, it **must allow** a prospective OFA purchaser the opportunity to determine how much of the line to acquire, **as the line is described in the abandonment petition.** Thus, at the point of filing the abandonment petition the abandoning rail line owner cannot reduce or diminish the rail line or the nature of the property interests associated with the line. Because a rail line owner is subject to the STB's jurisdiction until such time that the line has been properly abandoned or sold, it therefore must maintain the status quo with respect to its property interests in the rail line as described in its abandonment petition." (Bold added.)

37. The cases cited by the Office of Proceedings have been overruled by the 6th Circuit's *Railroad Ventures* decision. The 6th Circuit has ruled that **"neither the abandoning rail carrier nor the STB can alter or amend what the OFA buyer has offered to buy; rather, the STB can only set the terms on what the offeror has proposed to purchase."**

VALUE OF LAND

38. The Offerors' offer of \$30,250 for just a portion of Conrail's 1.39 acres between MP 2.70 and 2.80, is actually much greater than the real value of the entire 1.39 acres. The 1 + acre of land immediately adjacent to, and immediately east of Conrail's 1.39 acre parcel, was bought in November, 2011 for \$12,500. Conrail's 1.39 acre parcel is covered with hundreds of tons of solid waste, including several hundred tires (which cannot be disposed of in a landfill). Conrail has permitted Philadelphia residents to use the site as a local dump. But for the fact that the 1.39 acre parcel is hidden behind houses, the City of Philadelphia would have cited Conrail for maintaining a nuisance, and would have ordered Conrail to clean up the Site.

39. Conrail's 3 acre parcel between MP 2.8 + (north side of the bridge carrying the Berks Street line over the Richmond line) and MP 2.92 (south side of Allegheny Avenue), has much greater value than the 1.39 acre parcel on the south side of the Richmond line. The 3 acre parcel fronts on Allegheny Avenue for several hundred feet. Allegheny Avenue is a major east-west arterial that is two lanes in each direction. It is zoned commercial. It is rectangular and is large enough to support a fair-sized shopping center. The City of Philadelphia has offered grant

money to Mr. Groverman, the putative buyer of the 3 acre parcel, to help finance the purchase and development of the 3 acre parcel into a shopping center. It has little trash on it.

40. Conrail's 1.39 acre parcel is triangular in shape. Its frontage on Indiana Avenue, a very narrow (28 feet) residential street, is only about 60 feet. It is in a residential zone. It has several thousand tons of solid waste on it, including hundreds of tires. Adjacent property owners have substantially encroached on the parcel. Adjacent property owners have erected a chain link fence on the 1.39 acre parcel, thereby adversely possessing half or so of the parcel. One of the adjacent property owners has a dozen or so cars stored on the portion of the parcel they have fenced in. Another adjacent property owner has fenced in a portion of the parcel, and is using the parcel as a play ground for his children. (Riffin observed a large 4-swing swing set, a steel 'jungle gym', and an above ground swimming pool on the parcel.)

41. When the Offerors elected to offer to purchase just a 20-foot wide right-of-way across the 1.39 acre parcel, they did so to avoid the significant cost of attempting to quiet title to the parcel. Conrail has testified that it has not used the line for 30 years. There is a high probability that the adjacent neighbors have acquired title to the portion of the parcel they have openly, notoriously, and adversely possessed for more than 20 years, under the doctrine of adverse possession. The 20-foot wide right-of-way the Offerors propose to purchase, would skirt the area fenced in, and possessed by, the adjacent property owners. The Offerors deemed it more prudent to acquire only what is needed to reinstitute rail service, as opposed to attempting to evict the adjacent land owners from the 1.39 acre parcel. The Offerors are acutely aware that if an attempt were made to evict the adjacent land owners, they could retaliate by sabotaging the Offerors' rail line. Since it is impossible to 'police' a rail line 24/7, it is impossible to prevent sabotage of one's rail line.

CONCLUSION

42. The Offerors are financially responsible. Evidence of the Offerors' assets was available to the Office of Proceedings. The Offerors have good cause for late-filing a second copy of their financial statements: (A) The Office of Proceedings failed to incorporate by reference Riffin's AB-1071 financial statement; (B) The Office of Proceedings was not copied with a copy of

what Mr. Strohmeyer electronically filed under seal.

43. Pursuant to *Railroad Ventures*, the Offerors “**are entitled**” to offer to purchase less than what Conrail proposes to abandon. Purchasing less than the full 1.39 acres Conrail owns, is a prudent strategic decision, since it avoids adverse possession litigation with adjacent property owners and lessens the probability that adjacent property owners will retaliate by sabotaging the Offerors’ rail line. Purchasing less than the full 1.39 acres limits the quantity of solid waste the Offerors will have to remove.

44. The \$30,261 the Offerors offered to Conrail for the Line is much greater than its actual fair market value, as evidenced by the November, 2011 sale of an adjacent 1-acre parcel for \$12,500.

45. WHEREFORE, the Offerors would ask that the Board:

- A. Vacate the decision of the Office of Proceedings;
- B. Make a finding that the Offerors are financially responsible;
- C. Permit the OFA process to continue;
- D. Stay the abandonment proceedings to permit OFA negotiations between the Offerors and Conrail;
- E. And for such other and further relief as would be appropriate.

Respectfully,

E. Strohmeyer
By J. Riffin
with permission
Eric Strohmeyer
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CERTIFICATE OF SERVICE

I hereby certify that on the 20th Day of March, 2012, a copy of the foregoing Notice of Appeal was mailed via first class mail to John Enright, Conrail, Office of Law, 32nd Floor, 1717 Arch St., Philadelphia, PA, 19103, and to Benjamin Dunlap, Jr. Esq., Nauman, Smith, Shissler, and Hall, LLC, 18th Floor, 200 N. Third Street, Harrisburg, PA, 17101.

A handwritten signature in black ink, appearing to read 'J. W. Riffin', with a long horizontal flourish extending to the right.

James Riffin

Shipment Receipt: Page #1 of 1

THIS IS NOT A SHIPPING LABEL PLEASE SAVE FOR YOUR RECORDS

SHIP DATE:
Mon, Mar 12, 2012

EXPECTED DELIVERY DATE:
TUES, MAR 13, 2012 EOD

SHIP FROM:
Jim Riffin
1941 GREENSPRING DR
LUTHERVILLE TIM MD 21093-4158
(443) 414-6210

SHIP TO:
Surface Transportation Board
Office of Proceedings
395 E ST SW
WASHINGTON DC 20423-0012
Business
(443) 414-6210

SHIPPED THROUGH:
UPS CC SPARKS GLENCOE MD
SPARKS GLENCOE, MD 21152
(410) 472-9519

SHIPMENT INFORMATION:
UPS Ground Commercial
0.50 lbs actual wt
1.00 lbs billable wt
Dims: 12.00x8.00x0.01

Tracking Number: 1z292X050336179474
Shipment ID: MA34M6JV1NWD4
Ref 1: - -
Ref 2: - -

DESCRIPTION OF GOODS:
JR's protective order AB 167 / 1191X

SHIPMENT CHARGES:	
Ground Commercial	\$0.01
Service Options	\$0.00
Fuel Surcharge	\$0.60

Total	\$0.61
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COMPLETE ONLINE SHIPMENT TRACKING INFO:
Enter the following address in your web browser to view tracking info:
<http://www.ups.com/track/tracking.cgi?tracknum=1z292X050336179474>

QUESTIONS ABOUT YOUR SHIPMENT?
Call the carrier at 1-800-PICK-UPS (1-800-742-8877)
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB-167 (Sub- No. 1191X)

**CONSOLIDATED RAIL CORPORATION – ABANDONMENT EXEMPTION –
IN PHILADELPHIA, PA**

MARCH 19, 2012 VERIFIED STATEMENT OF JAMES RIFFIN

1. My name is James Riffin. I am over the age of 21. I am competent and authorized to make this verified statement.
2. On Friday, March 16, 2012, I inspected the Line that is the subject of this proceeding.
3. I inspected the 3-acre parcel that Conrail proposes to sell to Mr. Groverman. The 3-acre parcel is located on the south side of Allegheny Avenue, a major east-west arterial in the City of Philadelphia. Allegheny Avenue is two-lanes in each direction. The parcel is bounded by the Line on the west, by Allegheny Avenue on the north, by 2nd street on the east, and by Conrail's Richmond Industrial Track on the south. The parcel is zoned commercial. The parcel is relatively flat, at grade with Allegheny Avenue. The parcel is rectangular in shape. It has about 300 feet of frontage on Allegheny Avenue. There is little trash on the parcel.
4. The 3-acre parcel is slated to be purchased by Mr. Groverman. Upon information and belief, Mr. Groverman intends to build a shopping center on the parcel. There is a dearth of shopping centers in this area of Philadelphia. Part of the cost of purchasing and developing the parcel will be paid for by grant money.
5. I inspected the 1.39 acre parcel Conrail owns in the vicinity of MP 2.80. The parcel is triangular in shape. It is bounded on the north by Conrail's Richmond Industrial Track, which is about 25 feet below the grade of the 1.39 acre parcel. It is bounded on the east by a one-acre parcel that was sold in November, 2011 for \$12,500. It is bounded on the south by Indiana Avenue, a narrow (28 foot) 2-lane residential street. It is bounded on the west by adjacent residential properties. It is in a residential neighborhood. It has about 60 feet of frontage on Indiana Avenue.
6. On the west side of the 1.39 acre parcel I observed obvious encroachments. Adjacent property owners have extended their chain link fences onto the 1.39 acre parcel by 30-40 +/- feet.

Inside one fenced area, I observed about a dozen vehicles being stored on the 1.39 acre parcel. Inside another fenced area, I observed a commercial-grade swing set with 4 swings. The swing set was built with 2-inch schedule 40 galvanized pipe, imbedded in the ground. Adjacent to the swing set was a commercial-grade 'jungle gym' constructed with schedule 40 galvanized pipe, painted black, imbedded in the ground. I also observed an above-ground swimming pool about 20-feet in diameter, about 42 inches in height, filled with water. Surrounding the swimming pool was a sand perimeter, about 5 feet in width. Adjacent to the swimming pool was filtration equipment and pumps. It was obvious that the encroachments were permanent in nature, and had been there for a number of years.

7. I also observed that the 1.39 acre parcel was covered with several thousand tons of dirt, bricks, and construction and demolition debris, including tons of broken concrete. Hundreds of tires littered the site. It was obvious that the site has been used as a local dump for many years.

8. I noted where the connecting track that connected the Richmond Industrial Track and the Berks Street Industrial Track, used to be. The right of way appeared to originally be about 60-feet wide. The solid waste and encroachments have narrowed the right-of-way to about 20 feet. The remaining 20-feet of right-of-way could be used for a connecting track reconnecting the Berks Street Industrial Track with the Richmond Industrial Track.

9. It appeared to be possible to rebuild the connecting track within the remaining 20-foot right-of-way, without removing the encroachments.

10. The 1-acre parcel that is immediately east of, and adjacent to, the 1.39 acre Conrail parcel, was relatively flat, and free of debris. I spoke with Fernando Quiles, who stated that he purchased the 1-acre parcel in November, 2011, for \$12,500, in an arms-length transaction.

11. The bridge that carried the Berks Street Industrial Track over the Richmond Industrial Track is in extremely poor condition, and appeared to be an imminent hazard to local residents, who walk across the dilapidated bridge to traverse from Allegheny Avenue to Indiana Avenue. The cross ties have totally rotted out. The rails were removed some years ago by scrap metal thieves.

12. I certify under the penalties of perjury that the above is true and correct to the best of my personal knowledge, information and belief.

Executed on March 19, 2012.



James Riffin